



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region8>

Ref: 8WD-SDU

SENT VIA EMAIL
DIGITAL READ RECEIPT REQUESTED

Christopher Hagge, General Counsel
Merit Energy Company
chris.hagge@meritenergy.com

Honorable Jordan Dresser, Chairman
Northern Arapahoe Business Council
jordan.dresser@northernarapaho.com

Honorable John St. Clair, Chairman
Eastern Shoshone Business Council
jstclair@easternshoshone.org

**Re: Application to Transfer UIC Wells, Circle Ridge Field, Wind River Reservation,
Wyoming**

Dear Mr. Hagge, Chairman Dresser and Chairman St. Clair:

The purpose of this letter is to notify you that the United States Environmental Protection Agency Region 8 Underground Injection Control (UIC) Section has received and reviewed the transfer application submitted by Merit Energy Company on May 1, 2021. The application is for transfer of operational control of 22 Class II injection wells located in the Circle Ridge Field from Merit Energy Company (transferor) to the Eastern Shoshone Tribe and Northern Arapaho Tribe (transferees). Of the 22 injection wells, 10 are covered under permits and 12 are rule authorized. Based on the review of the transfer application and attached documents, the transfer application has been determined incomplete at this time. The following comments are provided to aid the parties in completing the transfer and clarify certain points regarding the regulations applicable to wells authorized by permit and by rule.

1. In accordance with 40 CFR § 144.28(l), notice for transfer of ownership or operational control of a Class II well authorized by rule must include a specific date when the financial responsibility (FR) demonstration of section 144.28(d) will be met by the transferee. At this time, the FR demonstration has not been made by the transferees, and there has not been a date specified by when this will be met.

As a result, this letter serves as notification pursuant to 40 CFR § 144.28(l) that the transferees are not authorized to operate the Class II wells authorized by rule until FR has been demonstrated pursuant to 40 CFR § 144.28(d). Additionally, for wells authorized by rule, 40 CFR § 144.28(d) requires that the transferor maintain FR until it has received notice from the Director that the transferee has demonstrated FR.

2. In accordance with 40 CFR § 144.38(b), for automatic transfer of permits, the notice received 30 days in advance of the proposed transfer date must include demonstration that the FR requirements of 40 CFR § 144.52(a)(7) will be met by the new permittee (transferee). As referenced above, the FR demonstration has not yet been made by the transferees. As a result, the transfer of permits must be processed as a modification under 40 CFR § 144.38(a), and a modification to transfer the permits will not be approved by EPA until FR has been demonstrated by the transferees. Consequently, the transferees are not authorized to operate the Class II wells until a permit modification reflecting the transfer of operational control has been issued.
3. If executed, please provide documents showing transfer of ownership of the Class II wells in the Circle Ridge Field between the transferor and transferees.
4. The Transfer and Assumption Agreement between the parties contemplates filing for termination of UIC permits by the transferor. Please be advised that the duration of well authorizations by rule is governed by 40 CFR § 144.22(a)-(b). Specifically, the well authorizations by rule do not end until a permit is issued, after plugging and abandonment under an approved plan and submission of a final report, or upon conversion in compliance with 40 CFR § 144.28(j).

Similarly, Class II UIC permits are issued for the operating life of the well pursuant to 40 CFR § 144.36, and permits may only be terminated for causes defined in 40 CFR § 144.40. As a result, a permit does not expire or terminate until at least one of the following has occurred:

- a. Well plugging and abandonment has occurred under an approved plan and submission of a final report;
- b. Upon conversion to a non-Class II well under another regulatory jurisdiction subject to the conditions contained in each permit; or
- c. An EPA termination action has occurred due to:
 - i. Non-compliance with a permit condition,
 - ii. An applicant's misrepresentation of or failure to fully disclose or all relevant facts during a permitting action, or
 - iii. Endangerment activity that occurred.

Once the application is determined complete, EPA intends to move forward on a final decision concerning the UIC transfer. If you have any questions or comments about the above action, please contact Christopher Brown at (303) 312-6669 or Brown.Christopher.T@epa.gov.

Sincerely,

5/17/2021

 Lisa Kahn

Signed by: LISA KAHN

Lisa Kahn, Acting Chief
Safe Drinking Water Branch

cc: Northern Arapahoe Business Council:
Lee Spoonhunter, Co-Chairman, lee.spoonhunter@northernarapaho.com
Jared White Bull, Councilman, jared.whitebull@northernarapaho.com
Boniface Ridgley, Councilman, boniface.ridgley@northernarapaho.com
Stephen Fast Horse, Councilman, stephen.fasthorse@northernarapaho.com
Kimberly Whiteman Harjo, Councilwoman, kim.harjo@northernarapaho.com

Eastern Shoshone Business Council:
John Washakie, Co-Chair, gljwashakie@easternshoshone.org
Gloria St. Clair, Councilwoman, gstclair@easternshoshone.org
Gus Thayer, Councilman, gthayer@easternshoshone.org
Michael Ute, Councilman, mute@easternshoshone.org
Sarr Weed, Jr., Councilman, sweedjr@easternshoshone.org

Brett Stavin, Attorney, bstavin@rosettelaaw.com
Rosette, LLP

Keith Harper, Attorney, kharper@jenner.com
Jenner & Block

Steven Siros, Attorney, ssiros@jenner.com
Jenner & Block

Kat Lyles, Assistant General Counsel, kat.lyles@meritenergy.com
Merit Energy Company

Gordan Zane, Fluid Minerals Branch Chief, zane.gordon@bia.gov
U.S. Department of Interior, Bureau of Indian Affairs